

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

IN THE UNITED STATES DISTRICT COURT

NOV 14 2007

FOR THE SOUTHERN DISTRICT OF TEXAS

MICHAEL N. MULBY, CLERK OF COURT

HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

TEXAS OIL AND GATHERING, INC.,
JOHN KESSEL, and
EDGAR PETTIJOHN,

Defendants.

Criminal Number:

H 07 466

Violations:

18 U.S.C. § 371;

42 U.S.C. §§ 6928(d)(1); (d)(2)

42 U.S.C. § 300h-2(b)(2)

INDICTMENT

The Grand Jury charges:

COUNT 1

18 U.S.C. § 371

(Conspiracy)

I. Applicable Law

At all times relevant to this Indictment:

A. The Safe Drinking Water Act

1. The Safe Drinking Water Act, Title 42, United States Code, sections 300f through 300j-26 ("SDWA"); Tex. Water Code §§ 27.001-27.105, contains provisions governing the use of injection wells. The Underground Injection Control provisions, Title 42, United States Code, sections 300h through 300h-7 ("UIC"), prohibit the unauthorized use of injection wells in order to prevent endangerment of underground drinking water sources. 42 U.S.C. § 300h(b)(1); Tex. Water Code §§ 27.003; 27.011; 27.031.

2. Pursuant to the UIC, a Class II injection well can only be used to inject fluids brought to the surface in connection with oil or natural gas storage or production, along with waste waters that are part of the production process (production waste). It is illegal to dispose of anything other than production waste in a Class II well. 42 U.S.C. § 300h; 40 C.F.R. § 144.6(b)(1); Tex. Water Code § 27.031; 16 Tex. Admin. Code § 3.8(d)(3).

3. The UIC provides that states may establish injection well regulatory programs, and sets regulatory requirements for injection well permit programs administered by states or the United States Environmental Protection Agency ("EPA"). 42 U.S.C. § 300h. Any underground injection, except into a well authorized by rule or except as authorized by permit issued under the UIC program, is prohibited. 40 C.F.R. § 144.11; Tex. Water Code §§ 27.011; 27.031.

4. In the State of Texas, Class II injection wells are regulated by the Railroad Commission of Texas ("TRRC"). 42 U.S.C. § 300h-1; 40 C.F.R. § 147.2201; see also Tex. Water Code § 27.011. The TRRC was granted primary regulatory authority over Class II wells in Texas on May 23, 1982. The program enacted by the State of Texas must be equivalent to and consistent with the federal program and provide adequate enforcement compliance. 42 U.S.C. § 6926.

B. Resource Conservation and Recovery Act

5. The Resource Conservation and Recovery Act, Title 42, United States Code, Sections 6901 et. seq. ("RCRA") was enacted in 1976 to address the nation's growing hazardous waste disposal problem resulting primarily from industrial operations. See Tex. Health & Safety Code § 361.002. RCRA, and the regulations promulgated thereunder, established a cradle-to-grave regulatory program for the safe management of hazardous waste. The intent of RCRA is to

protect human health and the environment by requiring the proper and safe management of hazardous waste from the time the waste is generated until the time of its final disposal. RCRA regulates the generation, treatment, storage, transportation, and disposal of hazardous wastes by establishing operating standards for generators and transporters of hazardous waste under Title 42, United States Code, Sections 6922 and 6923 (Tex. Health & Safety Code §§ 361.002-003), and a permitting system which requires a person to obtain a permit under Title 42, United States Code, Section 6924 (Tex. Health & Safety Code § 361.061; Tex. Admin. Code §§ 335.2; 335.43) in order to treat, store, or dispose of hazardous waste.

6. Hazardous waste is a waste with properties that make it dangerous or potentially harmful to human health or the environment. Hazardous wastes can be liquids, solids, contained gases or sludges. They can be by-products of manufacturing processes, such as spent solvents, or simply discarded commercial chemical products, like cleaning fluids or pesticides.

7. A hazardous waste is a waste that exhibits one of four characteristics - ignitability, corrosivity, reactivity or toxicity (40 C.F.R. §§ 261.21-24; Tex. Health & Safety Code § 361.003(12)), or appears on one of four lists (F-list, K-list, U-list and P-list) of commercial processes that generate hazardous wastes (40 C.F.R. §§ 261.31- 33; Tex. Health & Safety Code § 361.003(12)).

8. Pursuant to Title 42, United States Code, Sections 6924 and 6925; Tex. Health & Safety Code § 361.002; 30 Tex. Admin Code § 335.2, hazardous waste may be transported to, treated, stored, or disposed of only at facilities which have received permits to handle such wastes issued by EPA or a state authorized to administer a hazardous waste program by EPA.

9. A generator of hazardous waste who offers hazardous waste for transport to offsite

facilities for treatment must prepare a document called a "hazardous waste manifest." 40 C.F.R. § 262.20 (promulgated pursuant to 42 U.S.C. § 6922); 30 Tex. Admin Code § 335.11; Tex. Health & Safety Code § 361.036. The manifest is "the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage." 42 U.S.C. § 6903(12); 30 Tex. Admin. Code § 335.1(90). The generator must designate on the manifest a facility that is permitted to handle the waste described on the manifest. 40 C.F.R. § 262.20; 30 Tex. Admin. Code § 335.2(b). A generator must not offer his hazardous waste to treatment facilities that have not received an EPA identification number. The purpose of the manifest system is to allow the tracking of the waste from its point of generation to the point of final disposal.

10. A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed by the generator. 40 C.F.R. § 263.20; 30 Tex. Admin. Code § 335.11

11. Every owner of a hazardous waste facility must apply to the EPA for an EPA identification number. 40 C.F.R. § 264.11; 30 Tex. Admin. Code § 335.63.

12. The owner or operator of a facility that receives hazardous waste from an off-site source must inform the generator in writing that he has appropriate permits for, and will accept, the waste the generator is shipping. 40 C.F.R. § 264.12.

13. Before the owner or operator treats, stores, or disposes of any hazardous wastes, he must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information which must be known to treat, store

or dispose of the waste in accordance federal regulations. 40 C.F.R. § 264.13; 30 Tex. Admin. Code § 335.587.

14. Treatment includes any method, technique, or process designed to recover energy from the waste. 40 C.F.R. § 260.10; 42 U.S.C. § 6903(34); 30 Tex. Admin. Code § 335.1.

II. Defendants

15. Defendant TEXAS OIL AND GATHERING, INC. (“TEXAS OIL AND GATHERING”), was a Texas corporation headquartered in Alvin, Texas, within the Southern District of Texas.

16. Defendant JOHN KESSEL (“KESSEL”) was the owner and president of TEXAS OIL AND GATHERING.

17. Defendant EDGAR PETTIJOHN (“PETTIJOHN”) was employed as the Operations Manager for TEXAS OIL AND GATHERING.

III. Background Information

18. TEXAS OIL AND GATHERING was a registered with the State of Texas as a hazardous waste transporter and a used oil handler. TEXAS OIL AND GATHERING was not licensed, registered, or otherwise permitted to treat, store and/or dispose of hazardous waste. TEXAS OIL AND GATHERING did not have an EPA registration number required for hazardous waste facilities.

19. “Disposal Facility A,” a facility known to the Grand Jury and located in Rosharon, Texas, within the Southern District of Texas, was permitted by the Railroad Commission of Texas to operate Class II oil production waste injection wells. Disposal Facility A did not at any time have a permit or interim status authorization from the United States Environmental

Protection Agency or from the State of Texas under Title 42, United States Code, Section 6925 or 6926, to dispose of hazardous waste at its facility in Rosharon, Texas. Disposal Facility A did not, at any time, have a permit from the State of Texas to dispose of anything other than oil and gas production waste at its facility in Rosharon, Texas.

20. The cost to dispose of Defendant TEXAS OIL AND GATHERING's waste at Disposal Facility A was substantially less than the cost to dispose of Defendant TEXAS OIL AND GATHERING's waste at a properly licensed facility and thus Defendant TEXAS OIL AND GATHERING was able to substantially increase its profits through the illegal disposal of process and hazardous waste.

IV. The Conspiracy

21. The Grand Jury re-alleges and incorporates by reference herein paragraphs 1 through 20 of this Indictment.

22. Beginning at a time unknown to the Grand Jury but no later than April 2000, and continuing until at least January 2003, in the Southern District of Texas and elsewhere, the Defendants

TEXAS OIL AND GATHERING, INC.,
JOHN KESSEL,
and
EDGAR PETTIJOHN

together with others known and unknown to the Grand Jury, did knowingly and willfully conspire and agree to commit the following offenses against the United States:

- A) to illegally transport hazardous waste without a manifest 42 U.S.C. §§ 6928(d)(5); 40 C.F.R. §§ 262, Subpart B and 263, Subpart A; 30 Tex. Admin. Code § 335.11;

- B) to illegally transport hazardous waste to a facility that did not have a permit, in violation of 42 U.S.C. §§ 6928(d)(1); 40 C.F.R. § 262, Subpart B; 30 Tex. Admin. Code §§ 335.2; 335.11;
- C) to illegally dispose of hazardous wastes without a permit, in violation of 42 U.S.C. § 6928(d)(2); 30 Tex. Admin. Code § 335.2; Tex. Health & Safety Code § 361.017(e);
- D) to illegally dispose of waste other than oil and gas production waste in a Class II injection well, in violation of 42 U.S.C. § 300h-2(b)(2); Tex. Water Code § 27.031; Tex. Admin Code § 3.98.

All to enrich Defendants TEXAS OIL AND GATHERING, KESSEL and PETTIJOHN and other conspirators by maximizing the profits of TEXAS OIL AND GATHERING, without concern for drinking water contamination and environmental pollution.

A. Manner and Means

23. Defendants KESSEL, PETTIJOHN, and other conspirators known and unknown to the Grand Jury, on behalf of Defendant TEXAS OIL AND GATHERING, identified hazardous waste streams through public records and other means and contacted the companies producing those waste streams (“generators”). TEXAS OIL AND GATHERING purchased hazardous wastes from the generators, which are companies known to the Grand Jury (designated herein after as “Generator A, Generator B, etc.” when necessary to distinguish one from another).

24. Before TEXAS OIL AND GATHERING purchased the hazardous waste, at the direction of KESSEL and PETTIJOHN, employees of TEXAS OIL AND GATHERING tested the waste using motor fuel and fuel additive criteria, including oxygenate content, vapor content, ash content, sulphur content, and specific gravity (down stream specifications). These criteria are not designed to identify hazardous waste in compliance with 40 C.F.R. § 264.13; 30 Tex. Admin. Code § 335.587.

25. The hazardous waste purchased by TEXAS OIL AND GATHERING was transported in trucks owned by TEXAS OIL AND GATHERING and driven by TEXAS OIL AND GATHERING employees or in trucks owned by another company under contract with TEXAS OIL AND GATHERING, all at the direction of Defendants PETTIJOHN and KESSEL.

26. The hazardous waste purchased by TEXAS OIL AND GATHERING was transported without manifests to the TEXAS OIL AND GATHERING facility for the purpose of treatment and/or re-sale of the waste as a motor fuel and fuel additive.

27. The hazardous waste was placed in tanks at TEXAS OIL AND GATHERING's Alvin, Texas facility, including but not limited to tanks CB-1, CB-14 through 17, and CB-18 through 21, thereby causing the mixture of hazardous waste and other materials stored in the tanks.

28. The operations at TEXAS OIL AND GATHERING produced large amounts of liquid wastes, including hazardous waste. Defendants KESSEL, PETTIJOHN, and their conspirators knowingly transported and caused the transportation of hazardous and process waste by truck from the tanks at TEXAS OIL AND GATHERING to Disposal Facility A for the illegal disposal in class II injection wells.

29. Defendants KESSEL, PETTIJOHN, and other conspirators known and unknown to the Grand Jury, knew that Disposal Facility A was not authorized to accept and dispose of hazardous waste or any other waste originating at TEXAS OIL AND GATHERING, yet Defendants KESSEL, PETTIJOHN, and other conspirators known and unknown to the Grand Jury, on behalf of Defendant TEXAS OIL AND GATHERING, knowingly caused liquid process waste and hazardous waste to be injected into Class II disposal wells at Disposal

Facility A.

30. In order to conceal the fact that hazardous and process wastes were being illegally disposed of in a Class II injection well at Disposal Facility A, Defendant KESSEL and others known and unknown to the Grand Jury purported to operate an oil production well referred to hereinafter as the Goldston Fee. The Goldston Fee was in fact a non-producing well that was utilized by Defendants KESSEL and PETTIJOHN and other conspirators for the purpose of obtaining a well identification number in order to create false documents to disguise the origin of the hazardous and process waste hauled from TEXAS OIL AND GATHERING to Disposal Facility A for injection into a Class II injection well.

31. In furtherance of the conspiracy and in order to permit the continuation and prevent detection of the illegal transportation and disposal of hazardous and process waste generated at TEXAS OIL AND GATHERING at Disposal Facility A, Defendants KESSEL and PETTIJOHN directed the falsification of bills of lading and trip tickets and thereby misrepresented the origin and characteristics of the wastes being trucked to Disposal Facility A and otherwise engaged in deceptive practices to obscure the source and type of waste hauled to Disposal Facility A for disposal into Class II underground injection wells.

32. At the direction of Defendants KESSEL and PETTIJOHN and other conspirators, TEXAS OIL AND GATHERING drivers were directed to create false documents that indicated that the hazardous and process waste that they were hauling from TEXAS OIL AND GATHERING for disposal at Disposal Facility A was oil production waste obtained at the Goldston Fee.

33. Drivers employed by TEXAS OIL AND GATHERING, as directed by Defendants

KESSEL and PETTIJOHN and other conspirators, hauled hazardous and process waste to Disposal Facility A for disposal and presented employees of Disposal Facility A with documents that indicated that the waste was oil production waste originating at the Goldston Fee.

B. Overt Acts

34. Defendants KESSEL, PETTIJOHN, and other conspirators known and unknown to the Grand Jury, on behalf of Defendant TEXAS OIL AND GATHERING, committed the following overt acts in furtherance of the conspiracy.

35. **Overt Acts 1-10:** From in or about some time in 2000 continuing through January 2003 and beyond, Defendants KESSEL, PETTIJOHN, and other conspirators known and unknown to the Grand Jury, on behalf of Defendant TEXAS OIL AND GATHERING, regularly and routinely dumped and caused hazardous waste to be dumped into tanks located at the TEXAS OIL AND GATHERING facility, to wit: On or about the following dates, each of which constitutes a separate overt act of the conspiracy, Defendants KESSEL, PETTIJOHN, and other conspirators known and unknown to the Grand Jury, on behalf of Defendant TEXAS OIL AND GATHERING, caused the following hazardous wastes from the following generators to be placed into the following tanks:

Overt Act	Date	Generator	Tank
Overt Act 1	January 25, 2002	Generator A	CB-1
Overt Act 2	October 22, 2002	Generator A	CB-1
Overt Act 3	November 11, 2002	Generator B	CB-1
Overt Act 4	November 19, 2002	Generator C	CB-1
Overt Act 5	November 19, 2002	Generator A	CB-1
Overt Act 6	December 5, 2002	Generator E	CB-1

Overt Act 7	December 24, 2002	Generator E	CB-1
Overt Act 8	December 30, 2003	Generator A	CB-1
Overt Act 9	January 3, 2003	Generator D	CB-1
Overt Act 10	January 7, 2003	Generator D	CB-1

36. **Overt Acts 11-20:** Between approximately August 2000 and January 2003, on a regular and routine basis, including on or about the dates and times specified in Overt Acts Number 11 through 20, each act described constituting a separate overt act, Defendants KESSEL, PETTIJOHN, and other conspirators known and unknown to the Grand Jury, on behalf of Defendant TEXAS OIL AND GATHERING, directed and caused: (1) the disposal of fluids other than those brought to the surface in connection with oil or natural gas storage or production or waters that are part of the production process into a Class II underground injection well operated by Disposal Facility A, knowing that Disposal Facility A was not permitted to accept these fluids for disposal; and (2) the falsification of trip tickets, which falsely indicated that the fluid disposed of at Disposal Facility A came from the Goldston Fee, a production well, when in fact the fluid came from TEXAS OIL AND GATHERING.

Overt Act	Date	Time	Quantity (bbl) & Tank
Overt Act 11	November 21, 2000	1:30 p.m.	110 - plant
Over Act 12	October 16, 2002	8:20 a.m.	110 - CB-1 & CB-19
Overt Act 13	November 12, 2002	3:30 p.m.	100 - CB-1
Overt Act 14	November 20, 2002	3:45 p.m.	Unknown - CB-19
Overt Act 15	December 3, 2002	2:30 p.m.	Unknown - CB-19
Overt Act 16	December 9, 2002	9:30 a.m.	150 - plant

Overt Act 17	December 19, 2002	4:00 p.m.	150 - plant
Overt Act 18	December 30, 2002	3:30 p.m.	110 - CB-1
Overt Act 19	December 31, 2002	3:00 p.m.	150 - CB-19
Overt Act 20	January 9, 2003	4:30 p.m.	150 - CB-19

37. **Overt Acts 21- 33:** Between approximately August 2000 and January 2003, on a regular and routine basis, including on or about the dates specified in Overt Acts Number 21 through 33, each act described constituting a separate overt act, Defendants KESSEL, PETTIJOHN, and other conspirators known and unknown to the Grand Jury, on behalf of Defendant TEXAS OIL AND GATHERING, arranged for those acting under their direction to: (1) transport ignitable hazardous waste to Disposal Facility A and caused the disposal of ignitable hazardous waste at Disposal Facility A, a facility not permitted to accept hazardous waste; (2) caused the falsification of trip tickets, which falsely indicated that the fluid disposed of at Disposal Facility A came from the Goldston Fee, a production well, when in fact the fluid came from TEXAS OIL AND GATHERING; (3) caused the transportation of hazardous waste to an un-permitted facility; and (4) without a hazardous waste manifest.

Overt Act	Date	Hazardous characteristic	TEXAS OIL AND GATHERING Tank Number
Overt Act 21	June 28, 2002	Ignitable	CB-19
Overt Act 22	July 2, 2002	Ignitable	CB-1
Overt Act 23	July 3, 2002	Ignitable	CB -1 and 19

Overt Act 24	August 2, 2002	Ignitable	CB-1
Overt Act 25	August 5, 2002	Ignitable	CB-1 or 19
Overt Act 26	August 27, 2002	Ignitable	plant
Overt Act 27	October 24, 2002	Ignitable	CB-19
Overt Act 28	October 24, 2002	Ignitable	CB-19
Overt Act 29	November 3, 2002	Ignitable	plant
Overt Act 30	November 11, 2002	Ignitable	CB-1
Overt Act 31	December 9, 2002	Ignitable	Plant
Overt Act 32	December 19, 2002	Ignitable	Plant
Overt Act 33	January 9, 2003	Ignitable	CB-19

All in violation of Title 18, United States Code, section 371.

COUNTS 2-4
42 U.S.C. § 6928(d)(2)
(Illegal disposal of hazardous wastes without a permit)

38. The allegations contained in Paragraphs 1 through 20 of this Indictment are re-alleged and incorporated herein as though set forth in full.

39. On or about the following dates, in Rosharon, Texas, within the Southern District of Texas, Defendants TEXAS OIL AND GATHERING, JOHN KESSEL, and EDGAR PETTIJOHN did knowingly dispose of and cause the disposal of characteristic ignitable hazardous waste, namely hazardous waste from TEXAS OIL AND GATHERING, at Disposal Facility A.

Count 2	December 9, 2002
Count 3	December 19, 2002
Count 4	January 9, 2003

In violation of Title 42, United States Code, Section 6928(d)(2)(A); Title 18, United States Code, Section 2; Title 30 Tex. Admin. Code § 335.2; and Tex. Health & Safety Code § 361.017(e).

COUNTS 5-7

42 U.S.C. §§ 6928(d)(1); 40 C.F.R. § 262, Subpart B

(Illegal transportation of hazardous waste to a facility that did not have a permit)

40. The allegations contained in Paragraphs 1 through 20 of this Indictment are re-alleged and incorporated herein as though set forth in full.

41. On or about the following dates, in Rosharon, Texas, within the Southern District of Texas, Defendants TEXAS OIL AND GATHERING, JOHN KESSEL, and EDGAR PETTIJOHN did knowingly transport and cause the transportation of characteristic ignitable hazardous waste, namely hazardous waste from TEXAS OIL AND GATHERING, to a facility that did not have a permit to treat, store or dispose of hazardous waste, namely Disposal Facility A.

Count 5	December 9, 2002
Count 6	December 19, 2002
Count 7	January 9, 2003

In violation of Title 42, United States Code, Section 6928(d)(1); Title 18, United States Code, Section 2; and Title 30 Tex. Admin. Code §§ 335.2; 335.11.

COUNTS 8-14

42 U.S.C. § 300h-2(b)(2)

**(Illegal disposal of waste other than oil and gas production waste
in a Class II injection well)**

42. The allegations contained in Paragraphs 1 through 20 of this Indictment are re-alleged and incorporated herein as though set forth in full.

43. On or about the following dates, in Rosharon, Texas, within the Southern District of Texas, Defendants TEXAS OIL AND GATHERING, JOHN KESSEL, and EDGAR PETTIJOHN did knowingly and willfully dispose of and cause the disposal of waste other than oil and gas production waste, namely process waste from TEXAS OIL AND GATHERING, at Disposal Facility A.

Count 8	November 20, 2002
Count 9	December 3, 2002
Count 10	December 9, 2002
Count 11	December 19, 2002
Count 12	December 30, 2002
Count 13	December 31, 2002
Count 14	January 9, 2003

In violation of Title 42, United States Code, section 300h-2; Title 18, United States Code, Section 2; and Tex. Water Code § 27.031; Tex. Admin Code § 3.98.

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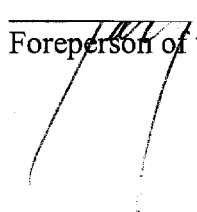
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By: 

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Original Signature on File


Foreperson of the Grand Jury


Date